

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

JAN 14 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

JAMES ROLLAND PRITCHARD, JR.,

Appellant.

2 CA-CR 2008-0379

DEPARTMENT B

MEMORANDUM DECISION

Not for Publication

Rule 111, Rules of
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20032584

Honorable Teresa Godoy, Judge Pro Tempore

AFFIRMED

Isabel G. Garcia, Pima County Legal Defender
By Scott A. Martin

Tucson
Attorneys for Appellant

B R A M M E R, Judge.

¶1 James Pritchard appeals from the trial court’s November 2008 order revoking his probation and sentencing him to a presumptive prison term of 2.5 years. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), avowing he has reviewed the entire record and found no arguable issue to raise on appeal. In compliance with *Clark*, counsel has provided “a detailed factual and procedural history of the case with citations to the record, [so] this court can satisfy itself that counsel has in fact thoroughly reviewed the record.” 196 Ariz. 530, ¶ 32, 2 P.3d at 97. Pritchard has not filed a supplemental brief.

¶2 Pursuant to our obligation under *Anders*, we have reviewed the record in its entirety and are satisfied it supports counsel’s recitation of the facts. Viewed in the light most favorable to upholding the court’s finding of a probation violation, *see State v. Vaughn*, 217 Ariz. 518, n.2, 176 P.3d 716, 717 n.2 (App. 2008), the evidence established the following.

¶3 Pursuant to a plea agreement, Pritchard was convicted in 2004 of attempted sexual abuse of a minor under fifteen years old, a dangerous crime against children in the second degree. *See* 2000 Ariz. Sess. Laws, ch. 50, § 1 (former A.R.S. § 13-604.01(L)).¹ The trial court suspended imposition of sentence and placed Pritchard on intensive probation for

¹Significant portions of Arizona’s criminal sentencing code were renumbered effective “from and after December 31, 2008.” 2008 Ariz. Sess. Laws, ch. 301, §§ 1-120. For consistency with trial court documents, we refer in this decision to the statutes as they were numbered when Pritchard committed the offense and was sentenced, rather than as they are currently numbered.

a period of ten years. In August 2008, the probation department filed a petition to revoke Pritchard's probation, alleging he had violated multiple conditions. After a contested hearing, the court found Pritchard had violated his probationary terms by failing to be at the location specified in his weekly schedule, by leaving his place of residence without authority, by possessing sexually stimulating or sexually oriented materials deemed inappropriate by his probation officer, and by knowingly associating without prior approval with a person having a prior criminal record.

¶4 A probation violation may be established by a preponderance of the evidence, Ariz. R. Crim. P. 27.8(b)(3), and we will uphold a trial court's finding of a violation "unless it is arbitrary or unsupported by any theory of evidence." *State v. Moore*, 125 Ariz. 305, 306, 609 P.2d 575, 576 (1980). The court's findings here were well supported by the record, and the sentences imposed upon revocation of Pritchard's probation were within the range authorized by law. *See* A.R.S. §§ 13-1404(B); 13-1001(C)(3); 1993 Ariz. Sess. Laws, ch. 255, § 10 (former A.R.S. § 13-701(C)). In our examination of the record pursuant to *Anders*, we have found no reversible error and no arguable issue warranting further appellate review.²

²Counsel has drawn our attention to apparent errors in Pritchard's 2004 plea agreement and what he characterizes as a "plea process . . . fraught with irregularities and inaccuracies, to [Pritchard]'s detriment." But we have no jurisdiction to consider on appeal "a judgment or sentence entered pursuant to a plea agreement." A.R.S. § 13-4033(B). As counsel appears to recognize, claims related to Pritchard's plea agreement would have been cognizable only in proceedings brought pursuant to Rule 32, Ariz. R. Crim. P. *See Montgomery v. Sheldon*, 181 Ariz. 256, 258, 889 P.2d 614, 616 (1995) (for pleading defendant, Rule 32 is "only means available for exercising the constitutional right to appellate review").

See Anders, 386 U.S. at 744. Accordingly, we affirm the trial court’s findings of probation violations, its revocation of Pritchard’s probation, and the sentence imposed.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge